

CQ528



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To: <ceq_nepa@fs.fed.us>
cc:
Subject: NEPA TASK FORCE COMMENTS

Hello NEPA Task Force Members.

Attached are my NEPA Task Force comments. I believe they are self-explanatory.

Thank you for this opportunity to comment.

Best regards,

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541.386.9700 (fax) CEQ NEPA Task Force Comments 08-22-02.doc

C0528

September 23, 2002

National Environmental Policy Act (NEPA) Task Force
Post Office Box 221150
Salt Lake City, Utah 84122

Re: Notice and Request for Comments
Council on Environmental Quality (CEQ) NEPA Task Force

Dear NEPA Task Force:

The Pacific Northwest Ski Areas Association (PNSAA) submits these comments in response to the notices published in the July 9, 2002 and August 20, 2002 issues of the *Federal Register*. The PNSAA is a non-profit trade association, which represents the interests of ski and snowboard facilities located throughout the Pacific Northwest. These facilities – the vast majority of which rely upon National Forest System (NFS) federal lands for their operations – collectively host more than 4.5 million forest visits each winter. I submit the following comments on behalf of the PNSAA Board of Directors and PNSAA's member ski areas.

Much of the review being requested of Task Force members involves National Environmental Policy Act (NEPA) procedural issues. Technology and information management, interagency and intergovernmental collaboration, joint-lead processes, assessment of programmatic analysis, and document "tiering" are process-related issues that are best addressed by federal agency personnel. The Association wishes to focus its efforts on the Task Force's questions related to the use of categorical exclusions and other related areas of consideration. The following comments are based on recent NEPA experiences in the Pacific Northwest region.

Categorical Exclusions (CEs)

In theory, activities that are similar in nature to previously approved activities, or that take place in the same footprint, or corridor, should qualify for the issuance of a CE. In practice, CEs are rarely granted.

In the rare instances where CEs are granted, the process has become complex and costly. As an example, Willamette Pass Ski Area (in Oregon) approached the USDA Forest Service with a proposal to construct a gondola lift to carry patrons over a public highway – safely connecting the parking facility of the ski area with the lodge and lifts and trails on the other side of the highway. The area that is to be affected by this project is previously disturbed and not suitable habitat for any species (i.e., a two lane highway, surface parking facilities, and a day lodge and surrounding milling areas). The primary purpose of the gondola project was to mitigate the real safety issues that exist with respect to Willamette Pass patrons trying to cross a highway – ski boots while carrying skis and poles. Ultimately, the USDA Forest Service did issue a CE for the project. However it took more than three years and numerous environmental surveys for the CE to be issued, costing ski area management more than \$30,000.00.

The Task Force should consider the development of new categories for CEs that explicitly address ski area operations. Examples might include CE categories for ski lift replacements (even in circumstances where different lift tower locations are required); modifications to existing trails; installation of snowmaking pipeline on existing trails and snowmaking water storage facilities; improvements to existing parking facilities (including transportation lifts like the conveyance proposed at Willamette Pass); and day lodge replacement structures. The new criteria for CE issuance should include sufficient flexibility to enable public land managers to make expeditious and judicious CE determinations.

Additional Areas for Consideration

Tentativeness Regarding the Environmental Assessment (EA) Process

The USDA Forest Service is requiring environmental impact statements (EISs) in situations where an environmental assessment (EA) should suffice. The federal government uses the EIS process to inoculate itself from legal challenges. While it is agreed that in limited circumstances an EIS does help reduce the likelihood that opposition groups will challenge certain tenants of the document, the costs associated with an EIS are much greater than the costs associated with an EA – both for the federal government and the special use permit holder.

The recent EIS required of Anthony Lakes Mountain Resort (ALMR) is a textbook example of this EA tentativeness. The handful of projects that constitute the ALMR Master Development Plan should have been reviewed via the environmental assessment process. By requiring an EIS, the NEPA exercise for ALMR was significantly more costly, and resulted in delays for critically important projects like sewage treatment infrastructure. Thus far, four summer construction seasons have been lost to the NEPA process. The elevated NEPA costs were absorbed by the unit of the USDA Forest Service that administers ALMR's special use permit, and by the owners of ALMR. The decision to require an EIS was a disservice to ALMR. The overall cost of the NEPA process – both the overall commitment of financial resources and the opportunity costs – has compromised ALMR's ability to implement programs and facility improvements. This has a direct affect on the recreational experience afforded members of the public, and the ability for ALMR to sustain operations in a very competitive marketplace.

Questionable Supplemental Environmental Impact Statements (SEISs)

In some circumstances, the federal government is requiring the preparation of SEISs in situations where they are not legally required to do so. Decisions to require SEISs contribute to elongated NEPA processes and elevate the financial commitment for both the federal government and the ski area operator. Today, NEPA processes can take a decade to complete, which means the original analysis often becomes stale even before the issuance of a NEPA record of decision. Because the initial NEPA process has become so lengthy, SEISs are now sometimes necessary. The staleness issue is additional evidence that today's NEPA process is grossly out of line with the original intent of the Act.

A related trend is the requirement of a second (or even third) EIS for the same project. Mt. Ashland Ski Area (in Oregon) and White Pass Ski Area (in Washington) have been subject to multiple EISs.

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Multiple EISs have been required in an attempt to avoid challenges to the original NEPA analysis (e.g., White Pass), or because the initial EIS process took so long that the analysis underlying it can no longer be considered current (e.g., Mt. Ashland). The result is seemingly endless and expensive NEPA analysis – not the sound decision-making intended by the authors of the Act. At Mt. Ashland, the ongoing NEPA process has been so unpredictable that it has seriously compromised the operator's efforts at strategic business planning, contributing to further erosion of the ski area's competitive position. During Mt. Ashland's NEPA process, a nearby ski area on private lands has pursued resort development that has significantly impacted the marketplace's overall assessment of Mt. Ashland ski facility.

Coordination Amongst Federal Agencies is Lacking

Comment periods are ignored by cooperating agencies, which negatively impacts the overall analysis of public comments. In the case of Mt. Ashland, comments provided by cooperating federal agencies – outside the official comment period – have led to extensive, additional analysis, and the USDA Forest Service's decision to require a REVISED draft environmental impact statement.

The nature of the NEPA process demands a high level of coordination amongst agencies (USDA Forest Service, US Environmental Protection Agency, US Fish and Wildlife Service, and the US Bureau of Land Management) that is difficult to achieve – at least in a timely fashion. Poor coordination diminishes the timeliness of the NEPA process, which exacerbates the staleness issue. Extensive coordination is required, but the declines in federal appropriations make the provision of adequate amounts of coordination a very challenging proposition.

Different Special Use Permits Have Different Standards

It is the ski industry's experience that different land allocations appear to have different NEPA standards. At Brundage Mountain Resort (in Idaho), there are multiple communication sites on the summit ridge of Brundage Mountain. While not exactly similar, these communication sites and the nearby ski area have comparable earth disturbing activities – summit access roads, permanent buildings, steel towers, utility infrastructure, etc. Recently, the local USDA Forest Service unit produced a Communications Site Plan and contributed the necessary environmental analysis required by NEPA. The NEPA process was timely and efficient, which is a sharp contrast to what the nearby ski area operator has experienced during the same time period. The ski area was required to produce its own master development plan and finance the accompanying NEPA analysis. The operator has experienced one delay after another, largely due to the requests for additional information of a highly technical nature. The ski area has encountered consulting fees in excess of \$500,000.00 and the process remains unfinished.

Cumulative Impacts

The issue of cumulative impacts is so ill-defined that it is susceptible to hostage taking by self-serving groups that philosophically oppose a proposed action. Federal land managers struggle to define the overall scope of a project's cumulative impacts. Consulting agencies must strive to do a better job of determining the parameters of the cumulative impacts analysis. Otherwise,

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groups wishing to bring about NEPA "monkey-wrenching" can easily manipulate this facet of the NEPA analysis.

NEPA Appeals Process

NEPA's administrative appeals process is an unreasonable, time-consuming process. If the federal agencies are doing a thorough job up to the point in time in which a record of decision is rendered, then there is no reason to squander time and agency effort with an administrative appeals process. As currently designed, the administrative appeals process hampers the agency. Most agency personnel will concur with this assessment. If a potential appellant is serious, the appellant will pursue an appeal in federal court. Many projects that are not destined to end up in federal court could be allowed to move forward in a more timely manner, were it not for the administrative appeals process.

Liberalization of the Scoping Process

Federal agencies receive numerous comments that reside far outside the scope of the proposed action. Yet agencies, in an effort to be as responsive as possible, address and find merit in many out-of scope comments. In some instances, alternative actions are developed and fully analyzed, even though the alternative proposal does not meet the original purpose and need for the proposed action. Federal agencies need to do a better job administering the scoping process and improve the processes for analyzing public comments. Substantive, relevant comments should be addressed. Comments that do not respond to legitimate issues, or that reside outside the realm of the purpose and need statement, should be summarily dismissed.

In closing, some small and medium size ski areas are not able to pursue facility enhancements because they perceive that they cannot afford the costs associated with today's NEPA process. For instance, Crystal Mountain (in Washington) produced a Master Development Plan in October 1998 (after more than two years of planning and \$750,000.00 in expense). Almost three years later - August 2001 - the USDA Forest Service released a draft environmental impact statement, which cost the ski area operator \$2,500,000.00 to produce. It is estimated that a final environmental impact statement will be released in December 2002, after another \$700,000.00 investment on the part of the ski area operator. After investing nearly \$4,000,000.00, and foregoing seven summers of possible project implementation, it remains unknown whether any of the projects might actually come to fruition. In some instances, the costs and time delays can be extraordinary and the uncertainty of the process preempts investment by the private sector.

I appreciate this opportunity to share the Association's views on NEPA reformation. If I can clarify any of my remarks, do not hesitate to contact me directly at 541.386.9600.

Best regards,

PACIFIC NORTHWEST SKI AREAS ASSOCIATION

Scott Kaden
President

cc: Linda Goodman, Kimberly Bown, Dan Harkenrider, and Michael Heilman